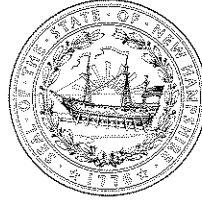


**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

September 12, 2005

Section 5 Submission

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20006

Re: Submission Under Section 5 of the Voting Rights Act for:

New Hampshire Revised Statute Annotated ("RSA") 654:31-a, a STATUTE related to a Right-to-Know Exemption for certain voter information first enacted by Laws of 2003 Chapter 289.

Dear Voting Section Chief:

Pursuant to 42 U.S.C. § 1973 (c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits RSA 654:31-a, a STATUTE related to a Right-to-Know Exemption for certain voter information first enacted by Laws of 2003 Chapter 289.

SUBMISSION:

In accordance with 28 C.F.R. § 51.27, the submission is as follows:

- a) Chapter 289 (2003) enacting RSA 654:31-a is attached (Exhibit 654:31-a A).
- b) This is a new statute, there is no prior statute being amended.
- c) The enactment of RSA 654:31-a makes a voter's name, street address, town or city, and party affiliation, if any, public information. All other information on a voter collected in the voter registration process is non-public. Non-public information may be disclosed by election

officials only if necessary in the furtherance of their duties or to resolve a challenge to a voter. Law enforcement may access the records for elections related investigations or specific records for other criminal investigation purposes.

- d) This submission is made by: Senior Assistant Attorney General Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301, Phone: (603) 271-1238.
- e) The submitting authority is New Hampshire Attorney General, Kelly A. Ayotte for the State of New Hampshire.
- f) Not applicable.
- g) The changes for which pre-clearance is sought were made by a decision of the New Hampshire General Court (Legislature).
- h) In accordance with Amendment X of the U.S. Constitution, the New Hampshire General Court, the State's legislature, acting pursuant to the New Hampshire Constitution Part Second, Article 2, granting supreme legislative power within the state to the House and Senate, who with right to negate each other are granted power to make law through Part Second, Article 5. Additional authority regarding election law is vested in Part First, Article 11.

The legislature through a bicameral process passed law to create Chapter 289 (Exhibit 654:31-a A). The bill was signed into law (by the Governor) on July 18, 2003, pursuant to New Hampshire Constitution Part Second, Article 44.

- i) Adoption dates:

1. Chapter 289 (2003) adopted July 18, 2003.

- j) Effective dates:

1. Chapter 289 (2003) effective September 1, 2003.

- k) The changes have been enforced.

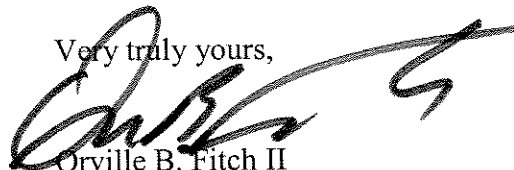
- l) The changes affect the entire State of New Hampshire.

- m) The purpose for the changes are as follows:

1. The purpose of the Chapter 289, section 53 (2003) change is make certain information maintained on voters non-public to protect their privacy and to deter identity theft.
- n) These changes do not negatively target any protected class under section 5 of the Voting Rights Act of 1965. *42 U.S.C. 1973c*. They are expected to have neutral impact and do not meet the test of retrogression defined in *Reno v. Bossier Parish Sch. Bd*, 520 U.S. 471, 478 (1997). “(T)he ability of minority groups...to elect their choices to office” will not be diminished. *Beer v. U.S.*, 425 U.S. 130,141 (1976).
- o) None known.
- p) This is a new statute as of its effective date.
- q) Not applicable as this is not a redistricting plan.
- r) Exhibit 654:31 B is a copy of a Press Release of this submission, its availability, and inviting comment to federal Department of Justice.

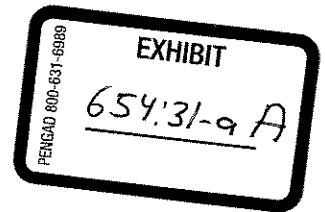
I expect the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please contact me.

Very truly yours,



Orville B. Fitch II
Senior Assistant Attorney General
Civil Bureau
(603) 271-1238
bud.fitch@doj.nh.gov

92673.doc



CHAPTER 289

HB 627-FN - FINAL VERSION

25mar03... 0694h

25mar03... 0946h

05/22/03 1640s

24jun03... 2155CofC

30jun03... 2316eba

2003 SESSION

03-0294

03/10

HOUSE BILL **627-FN**

AN ACT relative to domicile for voting purposes, penalties for voter fraud, and access to preserved ballots.

SPONSORS: Rep. Drisko, Hills 46; Rep. Lockwood, Merr 35; Rep. Naro, Graf 15; Rep. Whalley, Belk 31; Sen. Roberge, Dist 9

COMMITTEE: Election Law

AMENDED ANALYSIS

This bill:

- I. Establishes civil penalties for wrongful voting.
- II. Modifies procedures for voter registration and absentee voting.
- III. Modifies the laws concerning domicile as it relates to voting and eligibility for office.
- IV. Exempts preserved ballots from RSA 91-A, the right-to-know law.

This bill is a request of committee established by 2002, 15.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears ~~[in brackets and struck through.]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

25mar03... 0694h

25mar03... 0946h

289:53 New Section; Right to Know Exemption. Amend RSA 654 by inserting after section 31 the following new section:

654:31-a Right to Know Exemption. The information contained on the checklist of a town or city, specifically, the name, street address, town or city, and party affiliation, if any, of registered voters, except as otherwise provided by statute, is public information subject to RSA 91-A. All other information on the voter registration form, absentee registration affidavit, and application for absentee ballot shall be treated as confidential information and the records containing this information shall be exempt from the public disclosure provisions of RSA 91-A, except as provided by statutes other than RSA 91-A. Election officials and law enforcement personnel in furtherance of their official duties may access and may disclose information from the voter registration form, absentee registration affidavits, and applications for absentee ballots, if necessary to resolve a challenge to an individual registering to vote or voting, or if necessary to investigate or prosecute election law violations or any crime. Law enforcement access and use of such records for the investigation or prosecution of crimes unrelated to election law violations shall be limited to the records of the specific individuals who are the subject of the investigation or prosecution.

289:54 Absentee Voting; Refusal to Certify, Procedure. Amend RSA 657:16 to read as follows:

657:16 Refusal to Certify; Procedure. If he *or she* refuses to certify the application, the town or city clerk shall notify the applicant in writing within 7 days to that effect. ***The town or city clerk shall provide the applicant with an absentee ballot and a notice that the ballot will not be counted unless the applicant submits the documents necessary to complete an absentee registration. The applicant shall be advised in writing what documents, if any, have been received in proper form and which the applicant must submit in the return envelope that contains the absentee ballot affidavit envelope. The town or city clerk shall mark the exterior of the absentee ballot affidavit envelope with the words "Not Registered." If the applicant returns the required documents in proper form with the absentee ballot and if the applicant is found to be qualified, he or she shall be registered and his or her absentee ballot shall be processed in the same manner as the absentee ballot of a previously registered voter. If the ballot is returned without the required documents in proper form, the ballot shall be marked and preserved in the manner set forth by law for successfully challenged absentee ballots.*** The clerk shall preserve the application of any applicant who is not registered as a voter until the time [is] set by law for the destruction of the ballots after the election at which time the application shall be destroyed. Any justice of the superior court has jurisdiction in equity upon such notice as he *or she* may order to require that the name of the person making application for an absentee ballot be placed upon the checklist or registered as a member of any party and be sent an absentee ballot.

289:55 Procedure for Armed Services and Federal Overseas Citizen Voting; Sending Ballots. Amend RSA 657:19 to read as follows:

657:19 Sending Ballots. Upon receipt of a properly executed application for an official armed services absentee ballot or an overseas citizens federal election absentee ballot, whether the form supplied by the secretary of state, the federal post card application, or a written statement containing the information required by RSA 657:4, a town or city clerk shall send the materials provided for in RSA 657:8 or 657:9, as applicable, regardless of whether the applicant appears on the checklist, ***and if the applicant requests that the application be considered an application for an absentee ballot for each subsequent election for federal office through the next 2 regularly scheduled general elections, including primaries, for federal office, the town or city clerk shall provide an absentee ballot to the applicant for each such subsequent election.*** Whenever an armed services voter *or overseas citizen federal voter* requests a state general election ballot prior to October 1 to be mailed to an address [~~in Canada or Mexico or in any other country~~] outside of the [continental] United States, he *or she* shall be sent the same ballot as provided in RSA 656:34. ***No town or city clerk shall refuse to accept or process an otherwise valid voter registration application or absentee ballot application submitted by an absent armed services voter or federal overseas citizen voter on the grounds that the application was submitted before the first date on which the state otherwise accepts or processes such applications for that election submitted by absentee voters. A town or city clerk who does not certify a voter registration application or absentee ballot application shall provide the absent armed services voter or federal overseas citizen voter the reason for not certifying a voter registration application or an absentee ballot application.***

289:56 Federal Post Card Application. Amend RSA 657:19-a to read as follows:

657:19-a Federal Post Card Application. An armed services voter or federal overseas citizen voter who is domiciled [~~in Canada or Mexico or in any other country~~] outside the [continental] United States qualified to vote in New Hampshire may request an absentee ballot by completing a federal post card application form provided by the United States

the ballots for the inspection of the commission. Following the commission's inspection, the secretary of state shall replace the ballots and envelopes, seal them, and certify the contents and the date when they were examined by the commission. The envelopes and ballots shall be subject to the order of the body to which such person claims to be elected or of the officers required by law to examine the records and to issue certificates of election to such office or of any court having jurisdiction over them.

II. Ballots, including cast, cancelled, and uncast ballots and successfully challenged absentee ballots still contained in their envelopes, prepared or preserved in accordance with the election laws shall be exempt from the provisions of RSA 91-A. This exemption shall apply to any ballots or absentee voter affidavit envelopes prepared for or used in any election conducted by the state or any political subdivision, including federal elections.

289:62 Town Elections; Preservation of Ballots after Recount; Exemption from Right-to-Know Law. Amend RSA 669:33 to read as follows:

669:33 Preservation of Ballots after Recount.

I. Upon the conclusion of the recount, the clerk shall place the ballots and all envelopes or wrappers which had previously contained them in a suitable container showing the contents and the date when and the reason why it was opened; and said clerk shall retain said ballots until the expiration of 60 days from the date of the recount unless some action is pending which makes their further preservation necessary or unless enjoined by action brought before the superior court.

II. Ballots, including cast, cancelled, and uncast ballots and successfully challenged absentee ballots still contained in their envelopes, prepared or preserved in accordance with the election laws shall be exempt from the provisions of RSA 91-A. This exemption shall apply to any ballots or absentee voter affidavit envelopes prepared for or used in any election conducted by the state or any political subdivision, including federal elections.

289:63 Voters Confined in Penal Institutions; Address. Amend RSA 654:2-a, III to read as follows:

III. In completing a voter registration [eard] ***form***, as specified in RSA 654:7, a person confined in a penal institution shall list the address of his or her domicile in the address section, and the address of the penal institution in the mailing address section.

289:64 Registering at the Polling Place, Election Day Registration. Amend RSA 654:7-a, I to read as follows:

I. The provisions of this section and those of RSA 654:7-b shall be used as an additional procedure for voter registration. For the purposes of this section and RSA 654:7-b, the term "election day" shall refer to state primary and to state general elections, to all town, city, school district, and village district elections, and to all official ballot meetings where persons may vote by absentee ballot. A person who registers to vote on election day according to the provisions of this section shall also be required to complete the voter registration [eard] ***form*** provided for in RSA 654:7. The provisions of this section and those of RSA 654:7-b shall apply notwithstanding any provision of RSA 654 to the contrary.

289:65 Effective Date. This act shall take effect September 1, 2003.

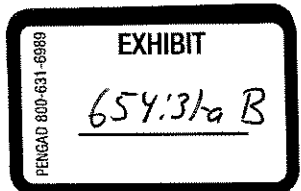
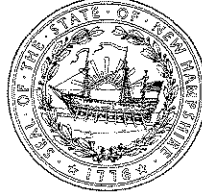
(Approved: July 18, 2003)

(Effective Date: September 1, 2003)

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News Release

RELEASED BY: Attorney General Kelly A. Ayotte

SUBJECT: Voting Rights Act – Submission of a request for preclearance of changes to New Hampshire Voting laws and procedures

DATE: June 10, 2005

RELEASE TIME: Immediate

Attorney General Kelly A. Ayotte announces the submission of requests for preclearance of changes made to the election laws in New Hampshire to the Federal Department of Justice. Preclearance submissions will address changes made to New Hampshire's election laws since jurisdictions in the State became subject to preclearance.

Ten New Hampshire towns are subject to section 5 of the federal Voting Rights Act. Changes to New Hampshire election laws that affect any of these ten towns must be submitted for review by either the Federal Department of Justice or the Federal District Court for Washington D.C. The federal Department of Justice will review the changes to New Hampshire's election laws to ensure that the changes do not have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. Changes to New Hampshire redistricting statutes have been submitted to, and approved by, the U.S. Justice Department since the 1980 census. Federal regulations require that the public be notified that the State has filed a request for preclearance and that the submission be available for public inspection.

Copies of each submission by the Attorney General for the State of New Hampshire are available at the office of the Attorney General at 33 Capitol Street, Concord New Hampshire, 03301. Each document will also be made available at the Attorney General's Office web site at:

<http://www.doj.nh.gov/elections/>

Attorney General Ayotte and the federal Department of Justice invite persons interested in this submission to submit comments and information, in writing or by telephone, to the Voting Section of the Federal Department of Justice, Civil Rights Division, at the earliest possible date to ensure that they may be considered during the preclearance review time period. Telephone 1-800-253-3931 or (202) 307-2385 or write Chief, Voting Section, Civil Rights Division, Room 7354 – NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530. The envelope and first page should be marked "Comment under section 5." Additional information on the Voting Rights Act and the preclearance process can be obtained at the web site of the Federal Department of Justice at:

<http://www.usdoj.gov/crt/voting/index.htm>

The New Hampshire Attorney General's Office Voting section can be contacted at:

<http://www.doj.nh.gov/elections/>
New Hampshire Toll Free 1-866-8868-3703
or 1-866-VOTER03
electionlaw@doj.nh.gov